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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Billed Party Preference)
for 0+ InterLATA Calls)

CC Docket No. 92-77

To: The Commission

**COMMENTS OF CITIZENS
UNITED FOR REHABILITATION OF ERRANTS**

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SUMMARY

C.U.R.E. is a non-profit organization dedicated to promoting reform of our nation's criminal justice system. C.U.R.E believes that BPP would benefit a substantial segment of its membership by redirecting the competitive efforts of prison OSPs away from correctional facilities and toward consumers who actually pay for collect calls originating from inmate-only prison telephones. Under the Commission's present regulatory scheme, these consumers are completely disenfranchised from the prison OSPs who establish the rates and conditions under which they provide service. Consequently, they have for years been forced to incur excessive rates and substandard service in order to maintain telephone contact with loved ones in prison.

Contrary to the claims made by some prison commentators, BPP will not increase the risk of inmate calling fraud or diminish the effectiveness of call control measures. To the contrary, BPP actually will enhance call control and fraud prevention mechanisms. Additionally, although BPP may diminish prison commissions generated by inmate calling traffic, those commission's will not be entirely eliminated. Thus, inmate programs that are sustained by such commissions will not be curtailed. In any event, the cost of such programs are a societal obligation, not one that should be borne by a small segment of the community that is already struggling with the financial and emotional burdens associated with having a loved one in prison.

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Citizens United for Rehabilitation of Errants ("C.U.R.E."), through its co-counsel, hereby submits these Comments in response to the Commission's Further Notice of Proposed Rulemaking, FCC 94-117, released June 6, 1994 ("Further Notice").^{1/} As explained more fully in its ex parte filing dated May 6, 1993, C.U.R.E. is a national non-profit organization dedicated to promoting reform of the criminal justice system.^{2/} C.U.R.E. believes that billed party preference ("BPP") will benefit a substantial segment of its membership by redirecting the competitive efforts of prison

^{1/} By Order, DA 94-703, released June 24, 1994, the Chief, Policy and Program Planning Division, Common Carrier Bureau, extended the time for the filing of comments until August 1, 1994.

^{2/} C.U.R.E.'s membership includes current and former prison inmates, their families and friends, politicians, religious and community leaders, affiliated non-profit charitable organizations, and other supporters who are interested in improving our nation's penal system.

Operator Service Providers ("OSPs") toward consumers who pay for collect calls originating from inmate-only telephones, thereby helping to reduce the costs associated with maintaining telephone contact with loved ones in prison. Accordingly, C.U.R.E. opposes providing a special exemption to correctional facilities from the Commission's proposed BPP scheme.

As shown below, BPP will not increase the risk of inmate fraud (i.e., the use of a carrier's network with the intent not to pay), nor will it reduce the ability of correctional institutions to effectively implement specialized screening and routing functions necessary for call control. To the contrary, the record establishes that BPP will actually enhance fraud and call control in the prison market. Thus, there is no compelling reason why the friends and families of prison inmates should be carved out and denied the same benefits of BPP that the Commission is proposing to make available to all other consumers.

In support whereof, C.U.R.E. respectfully states as follows:

1. The Commission has tentatively concluded that BPP would serve the public interest by, inter alia, "focusing operator services competition more squarely on consumers."^{3/} C.U.R.E. submits that perhaps no segment of consumers would be

^{3/} Further Notice, at 2 (¶2).

more profoundly served by the benefits of BPP than the families and friends of prison inmates, who for years have been victimized by predatory and oppressive charges and substandard service as the result of an aberrant marketplace in which they as consumers are entirely without choice.

2. In considering whether a special exemption should be granted to deny these consumers the benefits of BPP, the Commission should weigh the costs and benefits of BPP in terms of its likely affect on public safety, inmates, their families and friends. On the cost side, a number of commentators have speculated that BPP would increase the risk of inmate telephone fraud and abuse. Such claims, however, have been immensely overstated. On the benefit side, BPP would stimulate competition in the prison OSP market, increase consumer choice, lower prison collect calling rates and improve customer service, thereby reducing the costs of maintaining telephone contact with loved ones in prison and facilitating family and community ties that have a proven affect on reducing recidivism, preserving the family unit, easing prison tensions, and promoting the rehabilitation of ex-offenders. Thus, when fair weight is given to these considerations, C.U.R.E. submits that the balance falls squarely on the side of denying a special exemption to inmate-only telephones.

**I. BILLED PARTY PREFERENCE WILL NOT ELIMINATE
THE ABILITY OF PRISON ADMINISTRATORS TO CONTROL
TELEPHONE FRAUD AND ABUSE**

3. The generalized concerns expressed by prison commentators that BPP might hinder their ability to maintain fraud controls for inmate phones are misplaced. To the contrary, the record clearly establishes that BPP actually will help to improve fraud and call control in the prison calling market. C.U.R.E. suggests that these commentators' central concern lies with their perceived loss of lucrative and frequently unsupervised revenue streams generated from commissions paid on inmate collect-calling traffic.^{4/} However, because a portion of the inmate phone market appears to be IntraLATA and local calling traffic, prison officials likely will retain commissions from that traffic. But the potential loss of commissions notwithstanding, inmate families should not be denied one of the most important benefits of BPP -- the likelihood that OSPs will "refocus their competitive energies on serving end users rather than paying commissions for the 0+ traffic from public phones."^{5/}

^{4/} See e.g., Lancaster County Prison Comments, filed July 1, 1994; Larimer County Detention Center Comments, filed July 6, 1994; Rhode Island Department of Correction Comments, filed July 5, 1994; Washoe County Detention Facility Comments, filed July 8, 1994.

^{5/} See Further Notice at p. 6, ¶9.

A. Existing Fraud Controls Will Not Only Continue Under BPP, But Could Be Enhanced By More Effective Network-Based Security Measures

4. The record establishes that BPP will not affect existing call control measures for inmate phones and promises to enhance, rather than undermine, security measures for fraud prevention.^{6/} As explained by MCI in its comments, fraud prevention refers to processes designed to minimize uncollectible charges for calls placed through alternative billing arrangements such as collect, third party, and calling card calling. Call control relates to the implementation of specialized restrictions placed on inmate populations. Call control features include call blocking and collect call only calling.^{7/}

1. Call Control

5. BPP will not impair the ability of prison officials to execute call control features necessary to protect public

^{6/} See Ameritech Operating Companies Reply Comments filed August 27, 1992, at p. 14; MCI ex parte Comments, filed November 24, 1993, at p. 1; Pacific Bell ex parte Comments filed July 6, 1993, at p. 4.

^{7/} See MCI ex parte Comments, filed November 24, 1994. The Inmate Calling Service Providers Task Force ("ICSPTF") has challenged the distinction between call control and fraud prevention as "artificial" and "illusory" since some features serve both call control and fraud prevention functions. See ICSPTF ex parte Comments, filed December 7, 1994. Indeed, while the ICSPTF identifies some overlap between the two functions, the distinction is still valuable because it helps distinguish those security measures, namely call control mechanisms, that are most important to the prison community.

safety.^{8/} Nor will BPP inhibit the ability of correctional officers to block, monitor, limit, or record inmate calls. Contrary to the fears expressed by some prison administrators, BPP will not grant inmates carte blanche to harass judges, witnesses, victims or attorneys. Rather, as commenters have already explained, call control features are executed through existing customer provided equipment which will not be affected by BPP.^{9/} The ICSPTF and others have argued that application of BPP to the inmate context would eliminate the incentive for inmate calling service providers to provide the equipment necessary for call control. This argument is highly speculative and ignores the realities of the prison telephone market. While BPP likely will reduce prison OSP traffic and commissions for inter-LATA calling, it will not affect immediately the intra-LATA and local collect calling market.

6. According to 1993 estimates, the vast majority of the U.S. prison population resides in state and city/county facilities rather than federal institutions.^{10/} In contrast to the federal prison system, where inmates might be transported

^{8/} See MCI Reply Comments, filed August 27, 1992, at p. 15; MCI ex parte Comments, filed November 24, 1994 at p. 1.

^{9/} See Pacific Bell ex parte Comments, filed July 6, 1993, at p. 4 (citing telephone set capability for limiting collect calls); MCI ex parte Comments, filed November 24, 1994, at p. 1.

^{10/} According to figures provided by MCI, the nation's inmate population was divided as follows: State Institutions, 785,000 inmates; City/County Institutions, 336,000 inmates; and Federal Institutions, 72,000. MCI ex parte Comments, filed October 25, 1993, at p. 1.

to distant facilities outside the LATA, state and city/county facilities are likely to contain inmates who live within the LATA. Based on these statistics, it is reasonable to expect that the bulk of prison telephone traffic would be made up of calls from state or city/county inmates to their families and friends within the LATA. Thus, local collect calling, it would seem, should constitute much of the inmate phone market. Billed party preference will leave this lucrative segment of the prison market untouched, thereby undermining commenters' claims that BPP will eliminate the prison OSP industry, as well as all prison phone commissions.

7. Further, C.U.R.E. notes that in the general OSP market, the implementation of TOCSIA and its various dial-around requirements have not led to a mass exodus of service providers from the industry. As with any savvy competitor, OSPs have adjusted to a changing regulatory environment, and prison OSPs will similarly reposition themselves to succeed under BPP.

8. In addition to the fact that BPP will leave current call control systems untouched, the prospect of additional network-based security mechanisms, such as special ANI signalling that would allow global blocking of inmate calling, actually could strengthen existing on-site security measures.^{11/}

^{11/} For example, the use of specialized digits to signal that a call is originating from a correctional facility could provide global call control protection currently unavailable given the patchwork of premise-based security systems. ANI II digits "29"
(continued...)

2. Fraud Prevention

9. BPP would also offer significant improvements on current fraud prevention systems. As explained above, unlike call control features, which are the specific concern of prison communities, fraud prevention concerns are shared throughout the telephone market. As a result, incentives already exist for industry firms to implement and improve fraud prevention systems no matter what regulatory scheme is in place. Indeed, with the development of new telecommunications technologies and the new toll fraud opportunities presented by those developments, the industry has become increasingly vigilant in its efforts to reduce fraud.^{12/} Arguments to the contrary, that application of BPP to prisons will eliminate the incentive for firms to continue developing fraud prevention techniques, are simply unfounded.

10. Nevertheless, as in the case of call control, many existing anti-fraud monitors, such as those employed by Pacific Bell, operate on calls before they are routed to the network,

^{11/}(...continued)

have been assigned by the Industry Carriers Compatibility Forum for this purpose. If their use were mandated universally, carriers could protect consumers from unwanted inmate calls nationwide, rather than from individual institutions. In addition, ANI digits "29" could improve current fraud prevention efforts by enabling terminating carriers to disable conference, third-party and other call features that have been used by inmates to defeat existing fraud prevention systems.

^{12/} See Policies and Rules Concerning Toll Fraud, Notice of Proposed Rulemaking, 8 FCC Rcd 8618 (December 2, 1993) (citing industry-wide cooperative efforts to address toll fraud).

and thus would remain untouched under BPP.^{13/} Also, as commenters have already explained, by providing LECs and IXCs with total visibility into all traffic billed to a particular line number, BPP exposes fraudulent activity completely to a single carrier, rather than several who are unable to obtain an aggregate picture of suspicious activity on a line.^{14/}

**II. THE POTENTIAL LOSS OF PRISON COMMISSIONS
SHOULD NOT DETERMINE WHETHER BPP IS
IMPLEMENTED FOR INMATE-ONLY PHONES**

11. Prison commenters have warned that BPP could lead to the reduction or elimination of a variety of inmate programs and services that depend on phone commissions as a source of funding.^{15/} While C.U.R.E. strongly supports education and rehabilitative programs for inmates, the likely impact of BPP on prison commission, as described supra, is smaller than what prison administrators fear. Moreover, prison commentators have overlooked a critical point in their zeal to retain the status quo for inmate phones. Prisoners' families -- who frequently suffer tremendous financial and emotional upheaval when a loved

^{13/} See Reply Comments of Pacific Bell and Nevada Bell, filed August 27, 1992, at p. 9.

^{14/} See MCI Reply Comments, filed August 27, 1992, at pp. 14-15; Ameritech Operating Companies Reply Comments, filed August 27, 1992, at p. 14 (explaining that BPP will route calls to providers with whom the customer has an existing business relationship, thereby improving the chances of identifying suspicious activity on a line).

^{15/} See Kern County Minimum Security Facility Comments, filed July 5, 1994, at pp. 1-2; Mendocino County Correctional Facility Comments, filed July 5, 1994, at pp. 3-4.

one is incarcerated -- should not be forced to finance single-handedly educational and rehabilitative inmate programs through exorbitant OSP calling rates. As important as some of these programs may be, they are the responsibility of the community-at-large, not that of a small segment of the population that has committed no crime and can ill afford to subsidize these programs through this hidden form of taxation.^{16/}

III. EXEMPTIONS INMATE PHONES FROM BPP WOULD UNFAIRLY BURDEN INMATE FAMILIES AND FRIENDS

12. Having shown that BPP will not promote inmate calling fraud or abuse, the sole remaining issue is whether the families and friends of inmates should be afforded the same choices as other telephone consumers. Clearly, the answer is yes. Indeed, these consumers are uniquely positioned to enjoy substantial benefits from BPP. There is no reason why they should be forced to bear excessive prison telephone charges and substandard service simply because a loved one has been incarcerated.

13. Inmate phones provide a crucial link between prisoners and their families and friends. Indeed, in the increasingly common case where one or both parties are illiterate and/or are separated by a substantial distance from one another, the

^{16/} It should be noted that there is frequently no requirement that the commissions generated from inmate traffic be expended for inmate programs or even for law enforcement purposes. For example, in Virginia the commissions derived from inmate calls are added to the state's general welfare fund. See, "Pay Phone System for Inmates to Make Money for Virginia," Richmond News Leader, June 6, 1991.

telephone is the only means of communication available between prisoners and their loved ones.^{17/} As noted by C.U.R.E. in its ex parte filing, it is well established that frequent family and community contact is directly related to reducing recidivism among ex-offenders, preserving marital and family ties during periods of incarceration, encouraging prison discipline by alleviating tensions and providing an incentive for good behavior, and promoting society's efforts at rehabilitation.^{18/} Yet the excessive charges that accompany inmate collect-calls frequently make it difficult if not impossible for the families and friends of inmates to maintain telephone contact with loved ones in prison.

14. As reported by the Public Utility Law Project of New York, Inc. ("PULP"), federal studies have shown that the majority of state inmates had incomes below the federal poverty level before entering prison.^{19/} These studies and others cited by C.U.R.E., confirm that the families of inmates are most often economically disadvantaged and among the least able to sustain excessive charges for telephone usage. Nevertheless, these consumers are frequently forced to pay rates that substantially exceed those charged by most carriers for collect calls. Furthermore, they are customarily afforded substandard

^{17/} See Comments of the Public Utility Law Project of New York, Inc. ("PULP") at pp. 4-5.

^{18/} See C.U.R.E. ex parte filing of May 6, 1993, at pp. 8-11.

^{19/} See PULP's Comments filed July 15, 1994, at pp. 6-7.

service, replete with billing errors, poor line quality, and unresponsive vendors.

15. C.U.R.E. submits that these inequities have been spawned by the Commission's present regulatory scheme, which has helped to foster a prison calling environment in which consumers -- the recipients of collect calls from inmate-only telephones -- are completely denied the benefits of market competition. To maintain telephone contact with a loved one in prison, a family member or friend must receive and pay for collect calls that are presubscribed to a prison OSP that deals only with the prison and has no incentive to improve its services or lower its rates. Indeed, an OSP's principal objective initially is to offer the prison the highest commission rates possible in order to secure the necessary presubscription contract.^{20/} Thereafter, to honor its commitments -- which often include substantial monthly guarantees -- the OSP must seek to pass the cost of such commission's on to consumers by imposing excessive charges, maximizing prison calling traffic^{21/} and minimizing operating

^{20/} See e.g. trade literature attached hereto as Appendix A. This literature typifies the manner in which prison OSPs market their services to correctional facilities by promising "CASH FROM EVERY CALL" and offering to pay "the highest commission possible," seemingly without regard to the fact that these commissions will be passed on to low-income consumers through higher charges.

^{21/} Many systems, for example, are programmed to limit calls to 15 minute intervals, after which such calls are disconnected. However, there is often no limit on the number of times that a prisoner can use the phone. Consequently, families are forced to incur charges for the placement of two or more operated
(continued...)

expenses. At the same time, neither the inmate nor the billed party has any ability to control the costs associated with such calls because they are precluded from employing access codes to select an alternative carrier, utilizing direct dial, or placing the call from a different, non-presubscribed phone line.

16. BPP is likely to remedy these problems by allowing the recipients of collect calls originating from inmate-only prison telephones to select a preferred carrier that offers them the best service and lowest rates, thereby encouraging prison OSPs to redirect their competitive efforts towards meeting the needs of these end-users rather than paying high commissions to secure exclusive presubscription contracts. Thus, it is readily apparent that the families and friends of inmates would be particularly well-served by the competition that would emerge under BPP. Additionally, as noted in C.U.R.E.'s earlier ex parte filing, the savings enjoyed by consumers would help to facilitate communications between prisoners and their loved ones, thereby promoting the development and maintenance of family and community ties. Thus, BPP would not only benefit the recipients of inmate calls in particular, it would also serve the public interest in general.

²¹/ (...continued)

assisted calls rather than one if they have need to speak with the prisoner for more than 15 minutes.

**IV. RATE CAPS WILL NOT EFFECTIVELY REDUCE
EXCESSIVE PRISON OSP CHARGES OR
IMPROVE THE QUALITY OF SERVICE**

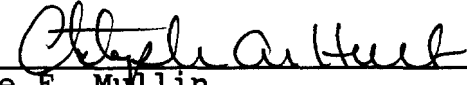
17. Several parties have generally suggested that a system of rate caps could achieve the same results as BPP -- namely, reducing prison collect calling rates -- without the risk of increasing telephone fraud and abuse. While perhaps an appealing concept in the abstract, when assessed realistically this alternative appears to have little merit. First, as established above, BPP will not impair fraud prevention or call control. Thus, there is no compelling reason why prison phones should be subject to an entirely unique set of regulations only to achieve the same rate relief that will flow from prison OSP competition under BPP. Secondly, the implementation of a Commission mandated system of price caps for carriers not currently subject to such regulation would likely spawn a regulatory morass without any substantial corresponding benefit to consumers. Without a steadfast and long-term commitment from the Commission to allocate scarce resources to implement and vigorously monitor and enforce such rate ceilings, the efficacy of any such plan would be wholly illusory. Moreover, the imposition of benchmark rates would not necessarily ensure that inmate families -- who more often than not would benefit from even the smallest of reductions in calling rates -- would enjoy the most competitive rates available under BPP. Finally, the implementation of rate ceilings alone would not compel prison OSPs to improve their quality of service, a substantial problem

that would be ameliorated through market competition under BPP. In short, BPP offers a fair and sensible means for reducing prison collect calling rates while at the same time introducing consumer choice and market competition. All this could be accomplished without the added regulatory burdens that would accompany FCC implementation, oversight and enforcement of a fair and effective rate ceiling plan.

18. Accordingly, for the foregoing reasons, C.U.R.E. respectfully urges the Commission to deny the special exemption requested by prison OSPs and to adopt a regulatory scheme that includes the families and friends of prison inmates among the legions of consumers who would benefit under BPP.

Respectfully submitted,

CITIZENS UNITED FOR REHABILITATION
OF ERRANTS

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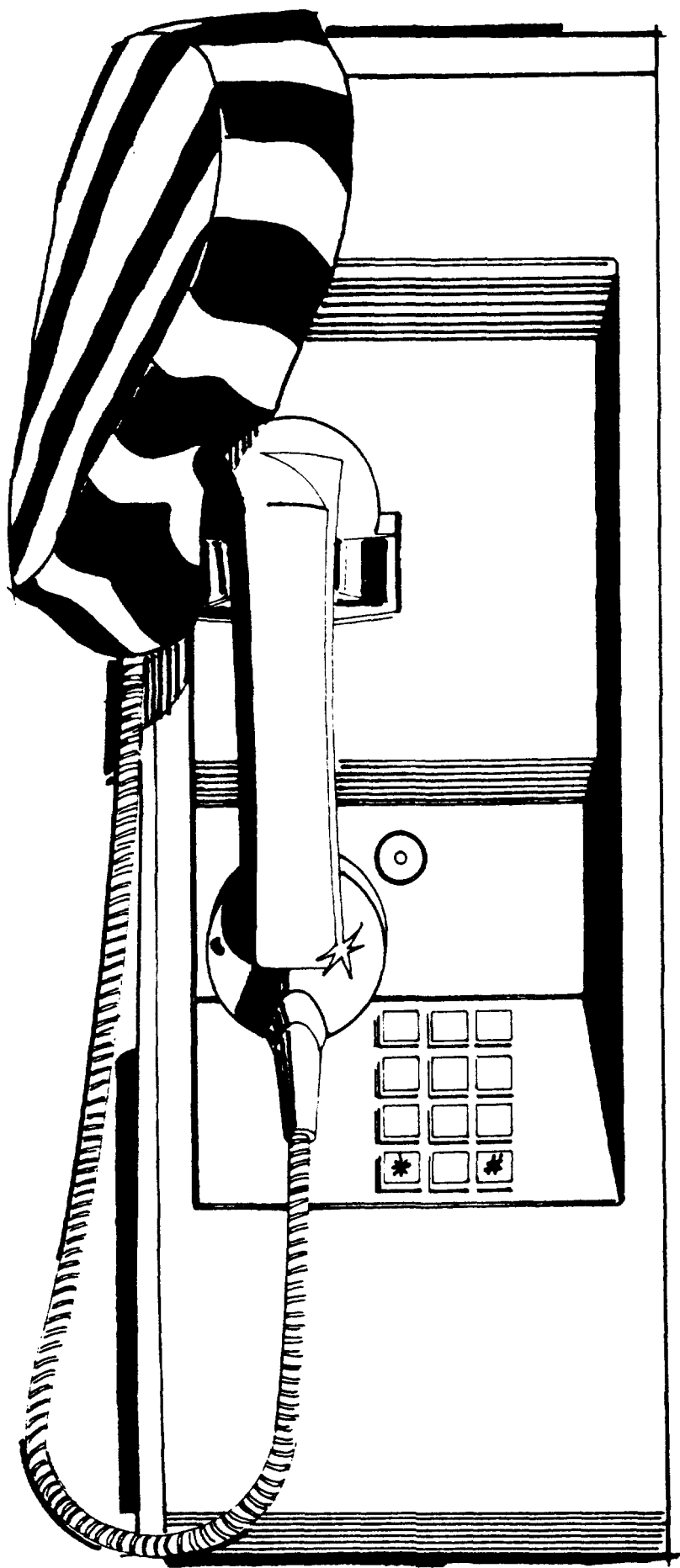
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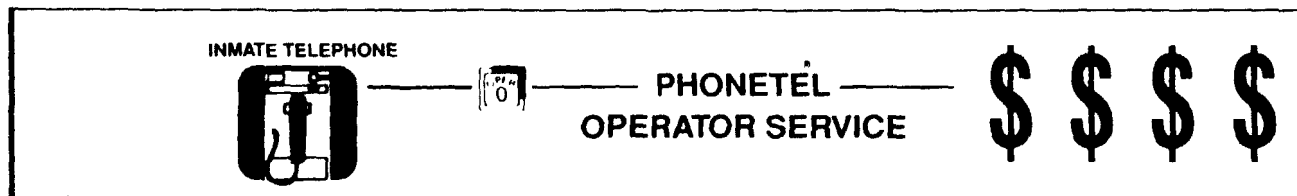
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